

STAMP & RETURN

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
RCC Minnesota, Inc.)
RCC Atlantic, Inc.)
)
For Designation as an Eligible)
Telecommunications Carrier)
In the State of New Hampshire)

CC Docket No. 96-45

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Federal Communication Commission
Bureau / Office

To: Wireline Competition Bureau

Petition for Designation as an Eligible Telecommunications Carrier
in the State of New Hampshire

RCC Minnesota, Inc. and RCC Atlantic, Inc. (collectively, "Rural Cellular"), by its counsel, submits this Petition for Designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 54.201. Rural Cellular requests that it be designated as eligible to receive all available support from the federal Universal Service Fund ("USF") including, but not limited to, support for rural, insular and high-cost areas and low-income customers. In support of this Petition, the following is respectfully shown:

I. Applicable Statutes and Rules

2. The statutes and rules implicated by the instant Petition are as follows: 47 U.S.C. §§ 153(27), 153(44), 214(e), 253(b), 254(d) 332(c)(A)(3); 47 C.F.R. §§ 51.5, 54.5, 54.101, 54.201, 54.207, 54.307, 54.313, and 54.314.

II. Authorization and Service Area

3. Rural Cellular is a telecommunications carrier as defined in 47 U.S.C. § 153(44) and 47 C.F.R. § 51.5, and for the purposes of Part 54 of the FCC's rules.¹ Rural Cellular is therefore considered a common carrier under the Act.

4. RCC Minnesota, Inc. is authorized by the FCC as the Personal Communications Service carrier in the Manchester-Nashua-Concord, Keene and Lebanon, NH Basic Trading Areas, and as the Cellular Radiotelephone Service provider in Portsmouth-Dover-Rochester, New Hampshire-Maine New England Cellular Market Area. RCC Atlantic, Inc. d/b/a UniceL is authorized by the FCC as the Cellular Radiotelephone Service provider in New Hampshire Rural Service Area 1 - Coos, New Hampshire. A map of Rural Cellular's proposed ETC service area is attached hereto as Exhibit A. Rural Cellular is a commercial mobile radio service ("CMRS") provider pursuant to the definition of "mobile service" provided in 47 U.S.C. § 153(27). Rural Cellular provides interstate telecommunications services as defined in 47 U.S.C. § 254(d) and 47 C.F.R. § 54.5.

5. Rural Cellular has operated continuously in New Hampshire for more than a decade. Rural Cellular has constructed a digital network and plans to further upgrade its existing facilities in the near future. With high-cost support, Rural Cellular can rapidly expand its network to deliver high-quality service to rural areas of New Hampshire, and offer customers a viable competitive alternative to incumbent wireline networks. A grant of this application will thus benefit rural citizens in New Hampshire.

6. Rural Cellular currently provides all the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's

¹ 47 C.F.R. § 54.1 *et seq.*

Rules, throughout its cellular service area in New Hampshire. Upon designation as an ETC, Rural Cellular will make available to consumers a universal service offering over its cellular network infrastructure, using the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers. As required by law, Rural Cellular will provide service to any customer requesting service within the designated ETC service area upon reasonable request. *See also*, Exhibit E, attached.

III. The New Hampshire Utilities Commission Has Provided an Affirmative Statement That It Does Not Regulate CMRS Carriers.

7. As a CMRS carrier, Rural Cellular is entitled to seek designation as an ETC.² Section 254(e) of Act, 47 U.S.C. § 254(e), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” 47 U.S.C. § 214(e). Pursuant to 47 U.S.C. § 214(e)(6), the Commission may, upon request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”

8. In the *Section 214(e)(6) Public Notice*, the Commission established that a carrier must demonstrate it “is not subject to the jurisdiction of a state commission.”³ In its *Twelfth Report and Order* in this docket, the Commission stated that where a carrier provides the Commission with an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation, the Commission would consider requests filed pursuant to Section 214(e)(6).⁴

² *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order*, 12 FCC Rcd 8776, 8858-59 (1997) (“*First Report and Order*”).

³ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947, 29948 (1997) (“*Section 214(e)(6) Public Notice*”).

⁴ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and*

9. On December 5, 2003, the New Hampshire Public Utilities Commission (“NHPUC”) issued an *Order Regarding Jurisdiction of the Commission* in response to RCC Minnesota, Inc. and RCC Atlantic, Inc.’s Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire, which Rural Cellular originally filed with the NHPUC on June 27, 2003. The NHPUC found that it does not have jurisdiction to make such designations. Specifically, the Commission held: “the Commission does not have jurisdiction over any cellular carrier because the New Hampshire legislature specifically removed cellular carriers from the jurisdiction of this Commission.”⁵ The NHPUC has clearly indicated it does not intend to designate CMRS carriers as ETCs. Accordingly, Rural Cellular has met its burden to demonstrate that it is “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.” 47 U.S.C. § 214(e)(6).

IV. Rural Cellular Offers the Supported Services to Qualify for Federal USF Support

10. Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that carriers designated as ETCs shall, throughout their service area, (1) offer the services that are supported by federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier’s services, and (2) advertise the availability of such services and the charges therefore using media of general distribution. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). The services which are supported by the federal USF are:

- 1) voice grade access to the public switched network;
- 2) local usage;
- 3) dual tone multi-frequency signaling or its functional equivalent;
- 4) single-party service or its functional equivalent;
- 5) access to emergency services;

Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000).

⁵ *RCC Minnesota, Inc. and RCC Atlantic, Inc. Petition for Designation as an eligible Telecommunications Carrier, Order Regarding Jurisdiction of the Commission*, Order No. 24,245 (December 5, 2003) at p.14. A copy of the Order is attached hereto as Exhibit H.

- 6) access to operator services;
- 7) access to interexchange service;
- 8) access to directory assistance; and
- 9) toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.101(a).

11. Rural Cellular is a full-service wireless carrier that now offers all of these services, as described in detail below. Rural Cellular has consistently demonstrated its capability to offer the supported services. Rural Cellular therefore satisfies the requirements of Section 214(e)(1) of the Act.

12. Voice Grade Access. Rural Cellular provides voice grade access to the public switched network through interconnection arrangements with local telephone companies. Rural Cellular offers its subscribers this service at bandwidth between 300 and 3,000 hertz as required by 47 C.F.R. 54.101(a)(1), thereby providing voice grade access.

13. Local Usage. Rural Cellular has a variety of rate plans that provide local usage consistent with 47 C.F.R. § 54.101(a)(2). To date, the FCC has not quantified a minimum amount of local usage required to be included in a universal service offering, but has initiated a separate proceeding to address this issue.⁶ As it relates to local usage, the *October 1998 NPRM* sought comment on a definition of the public service package that must be offered by all ETCs. Specifically, the FCC sought comment on how much, if any, local usage should be required to be provided to customers as part of a universal service offering.⁷ In the *First Report and Order*, the FCC deferred a determination on the amount of local usage that a carrier would be required to

⁶ *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502, 1506-07 (rel. Jan. 25, 2002) (“Guamcell”); *Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 21252 (1998) (“October 1998 NPRM”); *Federal-State Joint Board on Universal Service Order*, 17 FCC Rcd 22642, (rel. Nov. 8, 2002) (“Referral Order”).

⁷ See *October 1998 NPRM*, 13 FCC Rcd at 21277-21281.

provide.⁸ In 2002, the Joint Board did not specifically recommend an amount of local usage, but left it to the FCC to decide whether a minimum should be imposed. To date, the FCC has determined that when a carrier offers a variety of rate plans containing varying amounts of local usage, it meets that local usage requirement.⁹

14. Rural Cellular offers dozens of rate plans that provide customers with a variety of local usage included free of charge. Any minimum local usage requirement established by the FCC will be applicable to all designated ETCs, and Rural Cellular will comply with any and all minimum local usage requirements adopted by the FCC.

15. DTMF Signaling. Rural Cellular provides dual tone multi-frequency (“DTMF”) signaling to facilitate the transportation of signaling throughout its network. Rural Cellular currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling.

16. Single Party Service. “Single-party service” means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line.¹⁰ Rural Cellular provides single party service, as that term is defined in Section 54.101 of the FCC’s rules. *See* 47 C.F.R. § 54.101.

17. Access to Emergency Services. Rural Cellular currently provides 911 access to emergency services throughout its service area.

18. Access to Operator Services. Rural Cellular provides customer access to operator services. Customers can reach operator services in the traditional manner by dialing “0”.

⁸ *See First Report and Order*, 12 FCC Rcd at 8813.

⁹ *See Virginia Cellular, LLC, FCC 03-338, Memorandum Opinion & Order, released Jan. 22, 2004*; *Referral Order* and *RCC Washington Order*.

¹⁰ *Id.*, 18 FCC Rcd. at 8810.

19. Access to Interexchange Services. Rural Cellular has signed interconnection agreements with interexchange carriers. These arrangements enable Rural Cellular to provide its customers access to interexchange services. Customers may also “dial around” to reach their interexchange carrier of choice.

20. Access to Directory Assistance. Subscribers to Rural Cellular’s services are able to dial “411” or “555-1212” to reach directory assistance from their mobile phones.

21. Toll Limitation. Rural Cellular provides toll limitation by utilizing its toll blocking capabilities, enabling Rural Cellular to provide toll blocking service for Lifeline customers once Rural Cellular is designated an ETC.

22. The Commission’s *Section 214(e)(6) Public Notice* established that a carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”¹¹ Rural Cellular will provide the supported services using its existing network infrastructure, which includes the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers.

23. Pursuant to Section 54.201 of the FCC’s rules, 47 C.F.R. § 54.201, Rural Cellular will advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution. The methods of advertising utilized may include newspaper, magazine, direct mailings, public exhibits and displays, bill inserts, and telephone directory advertising. In addition, Rural Cellular will advertise the availability of Lifeline and Linkup benefits throughout its service area by including mention of such benefits in advertising and reaching out to community health, welfare, and employment offices to provide information to those people most likely to qualify for Lifeline and Linkup benefits. *See also*, Exhibit E, attached.

¹¹ *Section 214 Public Notice, supra*, 12 FCC Rcd at 22949.

V. Grant of Rural Cellular's Petition Will Serve the Public Interest

24. In areas served by non-rural LECs, the Commission shall designate Rural Cellular as an ETC upon finding that the company meets the nine-point checklist and that it agrees to advertise the supported services throughout its proposed ETC service area.¹² In areas served by a rural telephone company, the Commission must also find that a grant of ETC status would serve the public interest.¹³ In numerous cases decided by the FCC and state commissions, the answer has been in the affirmative, including several involving Rural Cellular and its affiliates.¹⁴

¹² See, e.g., *Cellular South Licenses, Inc.*, Docket No. 01-UA-0451 (Dec. 18, 2001) (Mississippi).

¹³ See 47 U.S.C. § 214(e)(2).

¹⁴ See, e.g., *Alaska Digitel, L.L.C. Order Granting Eligible Telecommunications Carrier Status and Requiring Filings*, Docket U-02-39, Order No. 10 (August 28, 2003) ("*Alaska Digitel Order*"); *Midwest Wireless Communications, LLC Petition for Designation as an Eligible Telecommunications Carrier in Minnesota, Order affirming Administrative Law Judge Findings of Fact, Conclusions of Law and Recommendation*, OAH Docket No. 3-2500-4980-2, PUC Docket No. PT6153/AM-02686 (March 19, 2003) (*Midwest Minnesota Order*); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000) ("*Western Wireless*"), *aff'd*, 24 CR 1216 (Oct. 19, 2001) ("*Western Wireless Recon. Order*"); *Smith Bagley, Inc., Final Order*, Utility Case No. 3026 (Feb. 19, 2002) (New Mexico); *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Az. Corp. Comm. Dec. 15, 2000) ("*SBI Arizona ETC Order*"); *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002) ("*Midwest Iowa Order*"); *RFB Cellular, Inc.*, Case No. U-13145 (Mich. P.S.C. Nov. 20, 2001) ("*RFB Michigan Order*"); *RCC Washington Order, supra*; *Cellular South License, Inc.*, DA 02-3317 (W.C.B. rel. Dec. 4, 2002) ("*Cellular South Alabama Order*"); *RCC Holdings, Inc.*, DA 02-3181 (W.C.B. rel. Nov. 25, 2002) ("*RCC Alabama Order*"); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd. 9589 (rel. May 24, 2002) ("*Pine Belt ETC Order*"); *N.E. Colorado Cellular, Inc.*, Docket No. 00A-315T (Dec. 21, 2001) (Colorado); *Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P5695/M-98-1285 (Oct. 27, 1999) (Minnesota); *RCC Minnesota, Inc. Request for Designation as an Eligible Telecommunications Carrier, Order*, Docket No. 2002-344 (Maine PUC, May 13, 2003) ("*RCC Maine Order*"); *RCC Holdings, Inc. d/b/a Unicel*, Docket No. 02-UA-533 (Mississippi Public Service Commission, Dec. 2, 2002) ("*RCC Mississippi Order*"); *RCC Atlantic, Inc.*, Docket No. 5918 (Vermont Public Service Board, Final Order Entered June 26, 2003) ("*RCC Vermont Order*"); *RCC Minnesota, Inc.*, Docket No. OAH Docket No. 3-2500-15169-2, PUC Docket No. PT6182,6181/M-02-1503

Because Rural Cellular demonstrates that its petition serves the public interest in rural areas, Rural Cellular does not address the Commission's recent pronouncement in *Virginia Cellular* that it may not always be in the public interest to designate a competitive ETC in non-rural areas.¹⁵

25. The public interest is to be determined by following guidance provided by Congress in adopting the Telecommunications Act of 1996 ("1996 Act") and the FCC in its enabling orders.¹⁶ The overarching principles embodied in the 1996 Act are to "promote competition and reduce regulation...secure lower prices and higher quality services...and encourage the rapid deployment of new telecommunications technologies."¹⁷ In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.¹⁸

26. The FCC must determine whether designation of Rural Cellular as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that

(Minnesota Public Utilities Commission, June 30, 2003) ("*RCC Minnesota Order*"); *US Cellular Washington Order, supra*; *US Cellular Wisconsin Order, supra*; and, *US Cellular Iowa Order, supra*.

¹⁵ *Virginia Cellular Order, supra*, at para. 27.

¹⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996); *See also, First Report and Order, supra*; *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432, 20480 (rel. Nov. 2, 1999) ("*Ninth Report and Order*"); *Fourteenth Report and Order, supra*. *See also NAACP v. FCC*, 425 U.S. 662, 669 (1976); *accord, e.g., Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1427 (D.C. Cir. 1983); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).

¹⁷ *Id.* (preamble).

¹⁸ *First Report and Order, supra*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order, supra*, 14 FCC Rcd at 20480.

consumers in rural, insular, and high-cost areas “have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹⁹

27. In considering whether Rural Cellular’s designation will bring new and cost-effective services to rural areas, the FCC may properly weigh the public cost against the public benefits. The Minnesota Public Utilities Commission used such a balancing test in its analysis of Minnesota Cellular’s application for ETC designation, determining that the petitioner had produced credible evidence of its intent and ability to offer service and the benefits to Minnesota consumers.²⁰ The benefits to consumers were weighed against costs, which the ILECs mostly claimed to be costs to their business.

A. Increased Consumer Choice and Service Quality.

31. Designation of Rural Cellular will advance universal service, promote competition and facilitate the provision of advanced communications services to the residents of rural New Hampshire. Residents in many rural areas have long trailed urban areas in receiving

¹⁹ See 47 U.S.C. § 254(b)(3).

²⁰ See *Minnesota Cellular Order*, *supra*, at pp. 16-18. See also, *Midwest Minnesota Order*, *supra*, wherein the Minnesota PUC affirmed its public interest analysis in the Minnesota Cellular decision.

²¹ *RCC Alabama Order*, *supra*, at ¶ 32.

²² See *Referral Order*, *supra*; see also, *Federal State Joint Board on Universal Service Notice of Proposed Rulemaking*, *supra* at n. 12, CC Docket No. 96-45, FCC 03-13 (released February 25, 2003).

competitive local exchange service and advanced telecommunications services. In many rural areas, no meaningful choice of local exchange carrier exists.

32. To date, a number of wireless carriers have been designated as ETCs in multiple states.²³ Recognizing the advantages wireless carriers can bring to the universal service program, the FCC has found that “imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer

²³ See, e.g., *Alaska Digital, L.L.C. Order Granting Eligible Telecommunications Carrier Status and Requiring Filings*, Docket U-02-39, Order No. 10 (August 28, 2003) (“*Alaska Digital Order*”) (Alaska); *RCC Minnesota, Inc.*, Docket No. UT-023033 (Wash. Util. & Transp. Comm’n Aug. 14, 2002) (“*RCC Washington Order*”); *Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 1502, 1506-07 (rel. Jan. 25, 2002) (Guam); *Cellular South License, Inc.*, DA 02-3317 (W.C.B. rel. Dec. 4, 2002) (“*Cellular South Alabama Order*”) (Alabama); *N.E. Colorado Cellular, Inc.*, Docket No. 00A-315T (Dec. 21, 2001) (Colorado); *Minnesota Cellular Corporation’s Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P5695/M-98-1285 (Oct. 27, 1999) (Minnesota); *RCC Holdings, Inc.* DA 02-3181 (W.C.B. rel. Nov. 26, 2002) (“*RCC Alabama Order*”) (Alabama); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd. 9589 (rel. May 24, 2002) (“*Pine Belt ETC Order*”) (Colorado); *RFB Cellular, Inc.*, Case No. U-13145 (Mich. P.S.C. Nov. 20, 2001) (“*RFB Michigan Order*”) (Michigan); *Midwest Wireless Iowa, L.L.C.*, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. July 12, 2002) (“*Midwest Iowa Order*”) (Iowa); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 55 (2000) (“*Western Wireless*”), *aff’d*, 24 CR 1216 (Oct. 19, 2001) (“*Western Wireless Recon. Order*”) (Wyoming); *Smith Bagley, Inc.*, Docket No. T-02556A-99-0207 (Az. Corp. Comm. Dec. 15, 2000) (“*SBI Arizona ETC Order*”) (Arizona); *Smith Bagley, Inc., Final Order*, Utility Case No. 3026 (Feb. 19, 2002) (New Mexico); *RCC Holdings, Inc. d/b/a Unicel*, Docket No. 02-UA-533 (Mississippi Public Service Commission, Dec. 2, 2002) (“*RCC Mississippi Order*”) (Mississippi); *RCC Minnesota, Inc. Request for Designation as an Eligible Telecommunications Carrier, Order*, Docket No. 2002-344 (Maine PUC, May 13, 2003) (“*RCC Maine Order*”) (Maine); *RCC Atlantic, Inc.*, Docket No. 5918 (Vermont Public Service Board, Final Order Entered June 26, 2003) (“*RCC Vermont Order*”) (Vermont); *RCC Minnesota, Inc.*, Docket No. OAH Docket No. 3-2500-15169-2, PUC Docket No. PT6182,6181/M-02-1503 (Minnesota Public Utilities Commission, June 30, 2003) (“*RCC Minnesota Order*”) (Minnesota); *United States Cellular Corporation, et al.*, Docket No. UT-970345 (Third Supplemental Order Granting Petition, Jan. 27, 2000) (“*US Cellular Washington Order*”) (Washington); *United States Cellular Corporation, Final Decision*, 8225-TI-102 (Wisconsin, December 20, 2002) (“*US Cellular Wisconsin Order*”) (Wisconsin); *United States Cellular Corporation, et al.*, Docket No. 199 IAC 39.2(4) (Iowa Util. Bd. January 15, 2002) (“*US Cellular Iowa Order*”) (Iowa).

service at much lower costs than traditional wireline service.”²⁴ The FCC recognized this fact in its initial decision designating Western Wireless as an ETC in the State of Wyoming, observing: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”²⁵

33. Rural Cellular will use high-cost support to deliver all of these benefits by constructing new facilities and improving existing facilities within the state of New Hampshire, just as it is doing in Vermont, Maine, Minnesota, Washington, and Alabama, states where it is currently receiving high-cost support. Rural Cellular projects that it will receive approximately \$228,000 in support during the first year of its designation as an ETC. With this money, the company commits to construct additional facilities to improve service quality, reduce dead spots, and extend telephone service to people who have no choice of telephone provider today. Rural Cellular anticipates commencing construction of new facilities that would bring new and/or improved wireless services to the communities in or around the Littleton, Plymouth, Lyme and Rollinsford areas in New Hampshire.. Should business conditions cause Rural Cellular to change its construction plans, the company will disclose that to the Commission in its annual report of how support was used over the past year.²⁶

34. As Rural Cellular constructs additional cell sites in high-cost areas to improve the quality of its radio frequency (“RF”) signal, its customers will have a greater choice among

²⁴ *First Report and Order*, 12 FCC Rcd at 8882-83.

²⁵ *Western Wireless, supra*.

²⁶ Rural Cellular’s build-out plan may evolve over time in response to consumer demand. If it does, Rural Cellular will explain how and why its plans have changed and that such changes are consistent with the company’s commitment to fulfill its universal service obligations. This commitment is consistent with that which was accepted by the Commission in the *Virginia*

service providers and will receive more reliable service. Some will have the option to receive Rural Cellular's service for the first time. Others will see service quality and reliability improvement such that they may choose Rural Cellular's service instead of ILECs, as opposed to confining their use of Rural Cellular's service to an ancillary communications tool. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Moreover, it has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer.²⁷

35. Lastly, Rural Cellular will implement its Lifeline and Link-Up programs which will offer service to low income consumers which have not previously had the opportunity to afford any choice in telephone service. A commitment to reach out to the low income community through active participation in the Lifeline and Link Up programs is an essential element in demonstrating that the public interest will be served by a grant of this petition. Many low income persons need a mobile phone and Rural Cellular will offer them the opportunity to choose a mobile service plan for the first time.

B. Health and Safety Benefits.

36. Similarly, in designating the cellular carrier Smith Bagley, Inc. as an ETC in Arizona, the state commission found competitive entry to provide additional consumer choice and a potential solution to "health and safety risks associated with geographic isolation."²⁸

Cellular Order, supra at para. 17.

²⁷ Lowering of prices has never been an issue in the wireless industry, not to mention that if a carrier does not use funding as required, ETC status may be revoked.

²⁸ *Smith Bagley Arizona Order, supra*, at p. 12.

Citizens in rural areas depend on mobile phones more and more to provide critical communications needs.

37. The FCC recognized the important health and safety benefits of a mobile telephone in the Virginia Cellular case.²⁹ It is self-evident that every time Rural Cellular adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase. All wireless carriers are required to implement Phase II E-911 service over the next several years. E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that Rural Cellular constructs, the reliability and performance of Rural Cellular's E-911 service will improve. It would be difficult to overstate the important public interest benefit that will be realized by supporting improvement to critical wireless infrastructure.

C. Competitive Response.

38. One of the principal goals of the 1996 Act was to "promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."³⁰ Competition in rural areas increases facilities and spurs development of advanced communications as carriers vie for a consumer's business.

39. There is no question that if Rural Cellular is designated as an ETC and is able to compete for local exchange customers, it will spur a competitive response from affected ILECs. Service quality and customer service will improve. New investments in plant will be made. High speed data (DSL) may be deployed more quickly to retain and attract customers. Wider local

²⁹ *Virginia Cellular Order, supra*, at para. 29.

³⁰ *See* 1996 Act (preamble).

calling areas, bundled service offerings, and lower prices overall will be introduced to compete with Rural Cellular to retain and attract customers.

40. The public interest standard under Section 214(e)(2) for designating ETCs in territories served by rural telephone companies emphasizes competition and consumer benefit, not incumbent protection. In considering the impact that Western Wireless' ETC designation in Wyoming would have on rural telephone companies, the FCC said:

We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.³¹

Further, Congress has mandated that universal service provisions be “competitively neutral” and “necessary to preserve and advance universal service.” *See* 47 U.S.C. §253(b). Rural Cellular will provide consumers with wider local calling areas, mobile communications, a variety of service offerings, high-quality service, and competitive rates. By offering customers new choices, the incumbent LECs will have an incentive to introduce new, innovative, or advanced service offerings.

41. In most rural areas, wireless telephone service is today a convenience, but it will not emerge as a potential alternative to wireline service unless high-cost loop support is made available to drive infrastructure investment. Indeed, without the high-cost program it is doubtful that many rural areas would have wireline telephone service even today. Provision of high-cost

³¹ *Western Wireless, supra*, 16 FCC Rcd at 57; *See also, RCC Washington Order* at pp. 16-17.

support to Rural Cellular will begin to level the playing field with the incumbent LECs and make available for the first time a potential competitor for primary telephone service in remote areas of New Hampshire.³²

42. The consumer benefits of designating competitive ETC, are already becoming evident. Competitive carriers in, for example, Arizona, Colorado, New Mexico and Mississippi, have earmarked high-cost support funds for additional channel capacity, new cell sites, and expedited upgrading of facilities from analog to digital. Rural Cellular has added 5 new cell sites and a switch upgrade to support E911 in Washington. In Alabama and Mississippi, Rural Cellular was able to invest in 4 new cell sites and complete switch upgrades.

43. With high-cost support in New Hampshire, Rural Cellular will have an opportunity to improve its network such that customers may begin to rely on wireless service as their primary phone.

D. State and Federal Precedent.

44. Designation of Rural Cellular as an ETC is consistent with ETC decisions across the country. There are now at least thirty cases at the state and federal level where designation of a wireless carrier as an ETC in a rural area was found to be in the public interest. Numerous state commissions and the FCC have repeatedly found that designating wireless carriers as ETCs

³² See, e.g., *Midwest Wireless Communications, LLC ALJ's Findings of Fact, Conclusions of Law, and Recommendation*, OAH Docket No. 3-2500-14980-2, PUC Docket No. PT6153/AM-02-686 (ALJ Dec. 31, 2002) at ¶37. ("although Midwest Wireless has been successful in obtaining conventional cellular customers, it does not currently compete for basic local exchange service. Designation of Midwest as an ETC would provide the support necessary to allow Midwest to provide...service and to enhance its network so that it can compete for basic local exchange service...Competition would benefit consumers in southern Minnesota by increasing customer choice (from no choice in most areas to more than one) and providing services made possible by wireless technologies.")

will promote competition, advance universal service, and further the deployment of advanced services. For example, in its decision to designate RCC Minnesota, Inc. as an ETC, the Washington Utilities and Transportation Commission stated: “Granting ETC designation to RCC ... will facilitate the telecommunications choices available to rural citizens, support the growth of new technologies and services, preserve and advance universal service, and promote competition and the benefits it brings.”³³ More recently, in designating Alaska Digitel, LLC as an ETC in Alaska, the Regulatory Commission of Alaska held that, “Granting the application will also provide customers more choices for meeting their communications needs..... customers will also have a choice in local calling areas, including an option for a wider local calling area than offered by the incumbent....”³⁴ Similarly, in its decision designating Western Wireless as an ETC in the State of Wyoming, the FCC held: “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”³⁵

45. A recent state ETC proceeding involving US Cellular, the Wisconsin Public Service Commission held:

The Commission finds that designating US Cellular as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice ... Further, designation of another ETC may spur ILEC infrastructure deployment and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of

³³ *RCC Washington Order*, *supra* at ¶68.

³⁴ *Alaska Digitel Order*, *supra* at p. 13.

³⁵ *Western Wireless*, *supra* n. 26, 16 FCC Rcd at 55 (2000); *see also Virginia Cellular*, *supra*, noting that mobility and wider local calling areas benefits the public interest.

life for affected citizens of Wisconsin.³⁶

Similarly, in designating US Cellular as an ETC in the State of Washington, the Washington Utilities and Transportation Commission stated that “rural customers will benefit from the increased availability of wireless service. These benefits include increased mobility and increased level of service.”³⁷

46. The FCC found that designating Virginia Cellular as an ETC would not “dramatically burden” the USF and that Virginia Cellular’s proposal did not constitute “cream skimming.”³⁸ The FCC also found that USF support for Virginia Cellular would be negligible.³⁹

47. Here, Rural Cellular’s designation will not burden the USF or result in cream skimming. Rural Cellular estimates that the funds that it would receive annually if it is designated as an ETC in New Hampshire’s rural service areas will be approximately \$ 228,000, less than .007% of the USF, a negligible amount, especially because although all rural consumers in Rural Cellular’s New Hampshire service area pay into the universal service system, many have yet to see the benefits promised in the 1996 Act.

48. Rural Cellular’s designation covers *all* but one rural service area in the state (described below). Thus, there can be no question as to so-called “cream skimming.” Rural Cellular will offer and advertise its service throughout 100% of its service area, including the service areas of all ILECs operating therein, other than one which has a study area that extends into area where Rural Cellular is not licensed.

³⁶ *US Cellular Wisconsin Order*, *supra* at p. 8.

³⁷ *US Cellular Washington Order*, *supra* at para. 41.

³⁸ *Virginia Cellular* ¶¶ 31-32.

³⁹ *Id.* ¶ 34.

E. Service Quality

49. Grant of Rural Cellular's petition will bring innovative and unique benefits to New Hampshire consumers. Rural Cellular is a regional carrier that serves portions of Maine, New Hampshire, New York, Massachusetts and all of Vermont. Rural Cellular's consumers may select regional local calling plans that extend the local calling area to millions of phones and permit a phone to be used in the home mode throughout the region. Rural Cellular employs a combination of analog, TDMA and CDMA technologies throughout the region so as to provide high quality voice services but also high-speed data. Consumers on Rural Cellular's system, or any compatible system constructed in urban areas, will find the company's compatible technology deployed in many hard to reach areas.

50. Rural Cellular believes that its network quality in rural areas to be superior based upon the number of 911 calls that are processed and anecdotal evidence from the rural communities it serves. By completing Rural Cellular's footprint throughout Vermont, Maine and New Hampshire, the FCC will begin to level the playing field between rural ILECs and wireless carriers. Consumers in these areas will receive competitive calling plans, with wider local calling areas, a choice of equipment and rate plans, at rates that are both affordable and competitive.

51. Rural Cellular already provides consumers with a high quality service. The company employs a regional staff of more than 400 people , including an experienced engineering and technical support team that provides on-call emergency support 24 hours a day, seven days a week. Rural Cellular's response time to an outage report is normally less than one hour.

52. Rural Cellular's system is reinforced by the presence of battery backups installed at its cell sites, accompanied by generators at more remote and key communication sites, along

with a pair of diesel generators at its switch, which are capable of running indefinitely in the event of a major electrical outage. In addition, the company has portable generators that can be moved to individual cell sites to supplement back-up batteries. Back-up batteries at Rural Cellular's primary cell sites provide at least 4 hours of back-up power, supplemented by generators that will run unattended up to several days before refueling is necessary. Because individual cell sites are spread out, it is highly unlikely that an electrical outage would affect more than two sites simultaneously. In the event of power or other types of fault, the cell sites are equipped with alarms that will alert our technicians. Additionally, the sites are monitored remotely by the switch should there be a total communications failure at the site.

53. Rural Cellular's service has a call completion rate of roughly 98% during the busy hour. Service quality comments are forwarded to the company's operations department to enable it to monitor network performance and improve customer service. The company's customer service representatives may be reached toll- and airtime-free, 24 hours a day seven days a week. Customer service representatives may be contacted through a number of convenient methods, including: (1) visiting any of the company's seven locally-owned retail/customer service locations in New Hampshire; (2) a 1-800 toll-free number from any phone; (3) by dialing *611, toll and airtime-free, from their wireless handset; or (4) by contacting our customer care center through the e-mail address provided on our web site at www.rccwireless.com.

54. Rural Cellular provides high-quality handsets, made by variety of manufactures including Sony/Ericsson, Nokia, Motorola and Samsung that are lightweight, highly portable, and easy to use. Customers have the option of purchasing headsets, car adapters, extended batteries, and other accessories.

55. Rural Cellular will construct new facilities with high-cost support to improve

service quality levels to rural New Hampshire consumers. The difference between Rural Cellular's network today and that of wireline carriers is that they have been subsidized for decades, and continue to be. As a result, they are capable of providing a high level of service quality to consumers they reach. Rural Cellular provides high service quality levels in every area where it has strong signal strength.

56. Just like ILECs, there are many areas where Rural Cellular would like to provide service but cannot without support. If designated, Rural Cellular commits to extend service to customers upon reasonable request. When ILECs began serving New Hampshire, most of the state did not have service. They had an opportunity to extend service to rural areas. Rural Cellular requests that same opportunity. In areas where signal strength is weak and where no business plan supports construction of new facilities, and Rural Cellular will use high-cost support to construct facilities to improve signal strength and serve consumers with top quality mobile service that urban consumers enjoy today.

G. Regulatory Compliance Matters.

57. Rural Cellular is familiar with the regulatory compliance matters discussed in Virginia Cellular. It is also familiar with the subject generally, as the Vermont Public Service Board has retained several regulatory compliance items to ensure that Rural Cellular is using high-cost support funds properly and provides quality service.

58. Although the question whether the Commission has the authority to impose such conditions on CMRS carriers is under review, Rural Cellular will commit to the conditions outlined in Virginia Cellular in this proceeding.⁴⁰ Rural Cellular has committed to the CTIA

⁴⁰ See, e.g., Petition for Reconsideration of the Virginia Cellular Order, seeking reconsideration of the Commission's imposing certain regulatory conditions, filed by several interested parties, including Rural Cellular. Rural Cellular agrees to those conditions in this case because the

Consumer Code For Wireless Service and will do so here. In sum, Rural Cellular will file reports with the Commission consistent with those required of Virginia Cellular so that the Commission can be appropriately advised that Rural Cellular has used high-cost support lawfully, will use it lawfully in the future, is responding to consumer requests for service, and has delivered high quality of service.⁴¹

59. Rural Cellular has provided specific facts demonstrating that a grant of its petition will serve the public interest. For all of the above reasons, the public interest would be served by the designation of Rural Cellular as a competitive ETC throughout its requested service area.

VI. Rural Cellular Requests Redefinition in the Granite State Telephone Service Area.

60. Granite State Telephone (“Granite”) has noncontiguous service area located outside of Rural Cellular’s FCC-licensed territory. Therefore, Rural Cellular requests the FCC redefine Granite’s service area pursuant to Section 54.207(c) of the FCC’s rules. Service area redefinition is necessary in order to facilitate competitive entry and advance universal service for those customers of Rural Cellular living in Granite’s service area.

61. Rural Cellular requests the FCC to classify each Granite wire center listed on Exhibit D as a separate service area. Once the FCC establishes redefined service areas for Granite, either the FCC or Rural Cellular may file a petition requesting the NHPUC to concur with the state’s redefinition.

Commission’s *Virginia Cellular Order* has not been stayed pending review.

⁴¹ For a detailed list of commitments made by Virginia Cellular, please see *Virginia Cellular Order*, *supra* at para. 46.

62. In considering the redefinition of a rural LEC service area, the FCC must take into account the recommendations of the Joint Board. In the *Recommended Decision*⁴² that laid the foundation for the FCC's *First Report and Order*, the Joint Board recommended that state commissions consider three issues when redefining a service area.

63. First, the Joint Board noted that redefining ETC service areas below the study area level may create the potential for "cream skimming," which could occur if a competitor proposed to only serve the lowest-cost exchanges.⁴³ There is no possibility for cream skimming in this case because Rural Cellular is restricted to providing service in those areas according to where it is licensed by the FCC. Rural Cellular is not picking and choosing among Granite's exchanges. On the contrary, Rural Cellular has based its requested ETC area solely on its licensed service area. Moreover, as of May 2002, all rural ILECs were required to select among the three paths adopted in the *Fourteenth Report and Order* for the disaggregation and targeting of high-cost support below the study area level. When support is no longer averaged across an incumbent LEC's study area, a competitor no longer has the incentive or ability to enter into incumbent LEC service territories in an uneconomic manner.⁴⁴

64. Second, the Joint Board emphasized the special status of rural carriers under the 1996 Act.⁴⁵ In deciding whether to designate Rural Cellular as an ETC, the FCC will weigh numerous factors and will consider how the public interest is affected by an award of ETC status pursuant to 47 U.S.C. § 214(e)(2). Accordingly, if the FCC finds that Rural Cellular's ETC

⁴² *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Recommended Decision*").

⁴³ *Recommended Decision*, 12 FCC Rcd at 179-80.

⁴⁴ *See Fourteenth Report and Order, supra*, 16 FCC Rcd at 11302.

⁴⁵ *See Recommended Decision*, 12 FCC Rcd at 180.

designation is in the public interest, the special status of the rural carriers will have been considered for purposes of determining whether Rural Cellular's service area designation should be adopted for federal universal service funding purposes. Further, Rural Cellular notes that no action in this proceeding will affect or prejudice any future action the FCC or NHPUC may take with respect to the LECs' status as a rural telephone company or disturb the "rural exemption" contained in Section 251 of the Act.

65. Finally, the Joint Board recommended that the FCC and state commissions consider the administrative burden a rural LEC would face by calculating its costs on a basis other than its entire study area.⁴⁶ In the instant case, Rural Cellular is proposing to redefine rural LEC service areas solely for ETC designation purposes. Service area redefinition for ETC purposes will in no way impact the way the Rural LECs calculate their costs, but it is solely to determine the area in which Rural Cellular is to be designated as an ETC.⁴⁷ Accordingly, redefinition of the Rural LECs' service areas as proposed in this Petition will not impose any additional burdens on the Rural LECs. Although Rural Cellular does not agree with the FCC's findings in *Virginia Cellular*,⁴⁸ Rural Cellular submits that in this instance it meets the FCC's criteria in its analysis of population density as a means of determining the possibility of cream skimming. As indicated by the population density figures in the attached Exhibit I, Rural Cellular serves the three least populous of Granite State's four rural wire centers. Based upon the FCC's decision in *Virginia Cellular* which stated that, "a low population density typically

⁴⁶ *Id.*

⁴⁷ LECs may disaggregate their study areas to reallocate high-cost support payments pursuant to the FCC's *Fourteenth Report and Order*. See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11304 n.377.

⁴⁸ See, *Virginia Cellular Order*, *supra* at paras. 34-35.

indicates a high-cost area,” the population density figures provided here demonstrate that no uneconomic support is proposed.⁴⁹

VII. High-Cost Certification

66. Under FCC Rule Sections 54.313 and 54.314, carriers wishing to obtain high-cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, self-certify with the FCC and the Universal Service Administrative Corporation (“USAC”) their compliance with Section 254(e) of the Federal Telecommunications Act of 1996. 47 C.F.R. §§ 54.313, 54.314. Rural Cellular attaches its high-cost certification letter as Exhibit F hereto. Rural Cellular respectfully requests that the FCC issue a finding that Rural Cellular has met the high-cost certification requirement and that Rural Cellular is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status in order that funding will not be delayed.⁵⁰

VIII. Anti-drug Abuse Certification

68. Rural Cellular certifies that no party to this petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. *See* Exhibit G hereto.

⁴⁹ *Id* at para. 34.

⁵⁰ *See, e.g. Guam Cellular and Paging, Inc. Petition for Waiver of FCC Rule Section 54.314*, CC Docket 96-45 (filed Feb. 6, 2002).

WHEREFORE, pursuant to Section 214(e)(2) of the Act, Rural Cellular respectfully requests that the Commission, (1) enter an Order designating Rural Cellular as an ETC for its requested ETC service area as shown on Exhibit A hereto, and (2) certify to the FCC that Rural Cellular will use the support for its intended purpose.

Respectfully submitted,

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